

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIFFANY HILL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

XEROX BUSINESS SERVICES, LLC, a
Delaware Limited Liability Company, *et*
al.,

Defendants.

CASE NO. C12-0717-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to define the scope of a certified class (Dkt. No. 142)¹ and motion to determine the number of interrogatories asked or for leave to serve additional interrogatories (Dkt. No. 144). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and issues the following order.

I. BACKGROUND

The Court has provided a detailed factual background of this case in a prior order, which

¹ Plaintiff withdrew her motion the day before it noted for the Court's consideration. (Dkt. No. 152.) Nevertheless, the class definition issue posed by Plaintiff's motion is ripe for determination. (*See* Dkt. No. 116.)

1 it will not repeat here. (*See* Dkt. No. 116.) On July 10, 2014, the Court denied Defendants’
2 motion for partial summary judgment and granted in part Plaintiff’s motion for class
3 certification. (*Id.* at 13.) The Court chose not to precisely define the certified “ABC” class until it
4 had reviewed a class settlement agreement from a similar lawsuit (the “*Sump* settlement”) to
5 determine whether claims that were released in that case would bar some class members from
6 participating in the present action. (*Id.* at 10, 13.) The Court directed the parties to file the *Sump*
7 settlement under seal and “either (1) jointly file a stipulation defining a class that accounts for the
8 *Sump* settlement; or (2) in the absence of any agreement, each file a brief not to exceed three
9 pages explaining how the proposed class should account for the *Sump* settlement.” (*Id.* at 10.)

10 The parties filed the *Sump* settlement agreement under seal, and each filed a brief
11 explaining how the proposed ABC class in this case should account for the claims released in the
12 *Sump* settlement. (Dkt. Nos. 121, 122, 123.) Defendants separately filed a motion for
13 reconsideration, asking the Court to reconsider both its denial of Defendants’ motion for partial
14 summary judgment and its certification of the ABC class. (Dkt. No. 117.) The Court denied
15 Defendants’ motion for reconsideration, but amended its order to certify that an immediate
16 interlocutory appeal of the Court’s denial of Defendants’ motion for partial summary judgment
17 was appropriate under 28 U.S.C. § 1292. (*Id.* at 3.) Defendants subsequently appealed and
18 moved to stay all proceedings in this case pending resolution of their interlocutory appeal. (Dkt.
19 No. 128.) Although not objecting to a stay, Plaintiff asked the Court to issue an order defining
20 the scope of the ABC certified class. (*See* Dkt. No. 129.) The Court stayed the case, but declined
21 to provide a class definition. (*See* Dkt. No. 131.)

22 On July 3, 2019, the Ninth Circuit issued its mandate on Defendants’ interlocutory
23 appeal, affirming this Court’s order denying Defendants’ motion for partial summary judgment.
24 (Dkt. No. 140); *Hill v. Xerox Business Services, LLC*, Case No. 14-36029 (9th Cir. 2019).
25 Following issuance of the mandate, the Court lifted its stay and ordered the parties to file a joint
26 status report “informing the Court of the most expeditious way to proceed to resolution of this

1 action.” (Dkt. No. 141.)

2 Plaintiff subsequently filed two motions: a motion to define the scope of the ABC class
3 (Dkt. No. 142), which it has since withdrawn; and a motion to “determine the number of
4 interrogatories asked or for leave to serve more.” (Dkt. No. 144). Defendant filed responses in
5 opposition to both motions. (Dkt. Nos. 147, 150). In accordance with the Court’s order, the
6 parties filed a joint status report in which they recommended differing ways to proceed in this
7 action. (*See* Dkt. No. 146.) Plaintiff recommends that the Court set a trial date and a
8 corresponding case scheduling order. (*Id.* at 1–2.) Defendants recommend that the Court allow
9 the parties to “submit briefs regarding how changes in the law and facts over the last five years
10 impact the expeditious resolution of this case.” (*Id.* at 2–3.)

11 **II. DISCUSSION**

12 **A. Class Definition**

13 The Court asked the parties to file briefs on how the *Sump* settlement affects the scope of
14 the ABC class. (*See* Dkt. No. 116 at 10.) Plaintiff asserts that members of the *Sump* settlement
15 class released all of their relevant wage-and-hour claims for conduct occurring “on or before
16 June 4, 2010.” (Dkt. No. 123 at 2.) Given the release date in the *Sump* settlement, Plaintiff
17 asserts that the ABC class should cover all claims accruing on or after June 5, 2010. (*Id.* at 3.) In
18 contrast, Defendants point out that the release of claims in the *Sump* settlement did not become
19 “effective” until September 10, 2010, the date the arbitrator in that case entered a final approval
20 of the class settlement. (Dkt. No. 121 at 3.) Given the effective date of the release, Defendants
21 argue that the ABC class should not cover claims before September 10, 2010. (*Id.* at 4.)

22 The Court has reviewed the *Sump* settlement and concludes that Plaintiff has the better
23 argument regarding the *Sump* settlement’s effect on the scope of the ABC class. The *Sump*
24 settlement is clear that class members were releasing claims based on conduct that occurred “on
25 or before June 4, 2010.” (Dkt. No. 119 at 6.) Regardless of when that settlement became
26 effective, the scope of the released claims in the *Sump* settlement never changed. To avoid

1 overlapping claims in this class action, the Court is concerned with *which* claims were released
2 in the *Sump* settlement, not *when* those claims were released. There is nothing in the *Sump*
3 settlement that suggests the plaintiffs were releasing claims based on conduct occurring after
4 June 4, 2010. Therefore, the Court finds that the effect of the *Sump* settlement on the ABC class
5 is to bar class claims that accrued prior to June 4, 2010. In accordance with the Court's prior
6 class certification order (Dkt. No. 116), the Court defines the ABC class as follows:

7 All persons who have worked at Defendants' Washington call centers under an
8 "Activity Based Compensation" or "ABC" plan that paid "per minute" rates for
9 certain work activities between June 5, 2010, and the date of final disposition of
this action.

10 In addition, the following exclusion will apply to the ABC class: "Any employees who
11 were hired after September 27, 2012 and who signed arbitration agreements as part of
12 Defendants' revised 2012 Dispute Resolution Program." This class exclusion is appropriate for
13 several reasons. First, in arguing for certification of the ABC class, Plaintiff explicitly stated that
14 "agents who started after September 27, 2012 and signed an individual arbitration agreement *are*
15 *excluded* from the class." (Dkt. No. 76 at 14) (emphasis added). Second, in certifying the ABC
16 class the Court acknowledged that "at least some of the agents who started after September 27,
17 2012, and signed arbitration agreements will be prevented from participating in this class
18 action." (Dkt. No. 116 at 9.) Third, the Court included this type of exclusion in a closely related
19 class action brought against Defendants, in which the plaintiffs alleged almost identical wage-
20 and-hour claims. *See Douglas v. Xerox Business Services, LLC*, Case No. C12-1798-JCC, Dkt.
21 No. 187 at 10 (W.D. Wash. 2014). Therefore, this class action will proceed based on the above
22 class definition and exclusion.

23 **B. Interrogatories**

24 Before the Court stayed this action, Plaintiff served Defendants with 19 interrogatories.
25 (See Dkt. No. 149 at 2–23.) In their responses—submitted in April 2013—Defendants objected
26 because two of the interrogatories contained several "subparts" that Defendants would treat as

1 separate interrogatories under Federal Rule of Civil Procedure 33(a)(1). (*Id.* at 8.) After the
2 Court lifted its stay, Plaintiff served an additional three interrogatories on Defendants. (*Id.* at 25–
3 31.) Defendants’ responses to those interrogatories are due on August 16, 2019. (*See id.*); Fed. R.
4 Civ. P. 33(b)(2).

5 In her motion, Plaintiff avers that “Defendants are expected to object that Plaintiff has
6 exceeded the limit in Civil Rule 33,” because of their prior objection to Plaintiff’s initial
7 interrogatories. (Dkt. No. 144 at 1.) Plaintiff asks the Court to “order that her interrogatories do
8 not contain discreet subparts or, alternatively, an order requiring Defendants to answer additional
9 interrogatories pursuant to Rule 33(a)(1).” (*Id.*)²

10 Plaintiff is asking the Court to resolve an unripe dispute. Federal Rule of Civil Procedure
11 33(b)(2) expressly gives a party 30 days to answer and object to interrogatories. Plaintiff
12 speculates that Defendants will object to her latest interrogatories as exceeding the limit imposed
13 by Rule 33(a)(1). But the Court can only guess as to whether Defendants will object on this
14 ground because their deadline to respond has not passed. Indeed, Plaintiff filed this motion
15 weeks before Defendants had to respond.

16 Essentially, Plaintiff is preemptively seeking an order compelling Defendants to answer
17 her latest set of interrogatories. Defendants should be afforded an opportunity to respond prior to
18 the Court compelling them to answer. This is the exact type of issue that should have been
19 addressed through a good faith meet-and-confer, prior to the filing a discovery motion—this
20 Court is not in the business of adjudicating hypothetical discovery disputes.

21 Plaintiff’s motion regarding her interrogatories (Dkt. No. 144) is DENIED. Prior to filing
22 any future discovery motions, the parties shall conduct a good faith meet-and-confer session that
23 addresses the specific issues underlying the discovery dispute.

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26 ² Defendants filed a surreply (Dkt. No. 155) asking the Court to strike various exhibits
submitted by Plaintiffs. Defendants request is DENIED.

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court ORDERS as follows:

3 1. Pursuant to the Court's order granting class certification (Dkt. No. 116), the Court
4 certifies the following class:

5 All persons who have worked at Defendants' Washington call centers under an
6 "Activity Based Compensation" or "ABC" plan that paid "per minute" rates for
7 certain work activities between June 5, 2010, and the date of final disposition of
this action.

8 The following exclusion applies to the class: "Any employees who were hired after
9 September 27, 2012 and who signed arbitration agreements as part of Defendants' revised 2012
10 Dispute Resolution Program."

11 2. Plaintiff's motion to determine the number of interrogatories asked or for leave to
12 serve additional interrogatories (Dkt. No. 144) is DENIED. The parties shall conduct a good
13 faith meet-and-confer prior to filing any future discovery motions.

14 3. The parties shall appear for a status conference on September 24, 2019 at 9:00
15 a.m. to establish a new trial date and corresponding case scheduling order.

16 DATED this 13th day of August 2019.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE